

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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July 2, 2004

Opinion No. 04-104

Budget of Shelby County Sheriff

QUESTION

May the Shelby County Board of Commissioners lawfully adopt a budget reducing below current levels the salaries and number of employees in the Sheriff's Department without the Sheriff's consent when doing so will interfere with the statutorily mandated duties of the Sheriff?

OPINIONS

Under Tenn. Code Ann. § 8-20-120, "[n]o county governing body shall adopt a budget absent the consent of the sheriff, which reduces below current levels the salaries and number of employees in the sheriff's department." The statute provides that, in the event a county governing body fails to budget any salary expenditure which is a necessity for the discharge of the statutorily mandated duties of the Sheriff, the Sheriff may seek a writ of mandamus to compel such appropriation. The writ of mandamus authorized by Tenn. Code Ann. § 8-20-120 may only be sought after the Sheriff has gone through both the local budget process and the application procedure required by Tenn. Code Ann. § 8-20-101(a)(2). But the Court of Appeals for the Western Section has held that some provisions of Tenn. Code Ann. §§ 8-20-101, *et seq.*, are not applicable to positions within the county's civil service system. *Patterson v. Rout*, slip op., No. W2001-01769-COA-R3-CV, 2002 WL 1592674 (Tenn. Ct. App. W.S. July 10, 2002).

This Office has not reviewed the current ordinance regarding the Shelby County Civil Service. If the Sheriff's employees are included in this system, then, under *Patterson*, a court is likely to hold that conditions of employment and salary levels are governed by that system and cannot be changed by petitioning under Tenn. Code Ann. §§ 8-20-101, *et seq.* But we think a court would conclude that, under Tenn. Code Ann. § 8-20-101, once the Shelby County Commission passes a budget, the Shelby County Sheriff may petition the court for additional positions necessary to enable him to carry out his statutorily mandated duties and, under Tenn. Code Ann. § 8-20-120, may seek a writ of mandamus to enforce the court's order.

ANALYSIS

This opinion concerns whether the Shelby County Board of Commissioners may lawfully adopt a budget reducing below current levels the salaries and number of employees in the Sheriff's Department without the Sheriff's consent when doing so will interfere with the statutorily mandated

duties of the Sheriff. The request indicates that the Shelby County Board of Commissioners is considering a budget under which the Mayor of Shelby County proposes to cut seventeen million dollars from the Shelby County Sheriff's budget. The request indicates that, under the proposal, the county would make deep cuts in funding which, if adopted, will reduce below current levels the salaries and number of employees in the Sheriff's Department and adversely affect the Sheriff's ability to safeguard the citizens of Shelby County. The request indicates that the cuts include, but are not limited to, eliminating the S.W.A.T. team and narcotics and metro gang units, and reducing patrols by thirty percent and court staffing by forty-five percent.

Under Tenn. Code Ann. § 8-20-120, a county in adopting any budget must fund the statutorily mandated duties of the Sheriff. This statute states:

Notwithstanding any other provision of the law to the contrary, county governing bodies shall fund the operations of the county sheriff's department. The sheriff may appoint such personnel as may be provided for in the budget adopted for such department. No county governing body shall adopt a budget absent the consent of the sheriff, which reduces below current levels the salaries and number of employees in the sheriff's department. In the event a county governing body fails to budget any salary expenditure which is a necessity for the discharge of the *statutorily mandated* duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation.

(Emphasis added). Similarly, Tenn. Code Ann. § 8-24-103 requires the county legislative body to make the necessary appropriation to fund the operation of the Sheriff's Office, including the salary of all the Sheriff's deputies, that have been authorized by the court. *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985). The writ of mandamus authorized by Tenn. Code Ann. § 8-20-120 may only be sought after the Sheriff has gone through both the local budget process and the application procedure required by Tenn. Code Ann. § 8-20-101(a)(2). *Jones v. Mankin*, 1989 WL 44924, slip op. (M.S. Tenn. Ct. App. May 5, 1989).

Thus, Tenn. Code Ann. § 8-20-120 is part of the process set forth in Tenn. Code Ann. §§ 8-20-101, *et seq.* This statutory scheme provides a mechanism under which certain county officers, including the Sheriff, may name the county executive and petition a court to increase the number of personnel and their salaries in that official's office beyond that provided in the county budget. Under this statutory scheme, a Sheriff may petition a court to increase the number of Sheriff's personnel and to increase their salaries. Under Tenn. Code Ann. § 8-20-101(a):

Where any one (1) of the . . . sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary

to the proper conducting of such person's office in the following manner and under the following conditions, namely:

* * * *

(2) The sheriff may . . . make application to the judge of the circuit court in the sheriff's county, for deputies and assistants, showing the necessity therefor, the number required and the salary that should be paid each; provided, that in the counties where criminal courts are established, the sheriff may apply to the judge of such criminal court[.]

Suit is brought under Tenn. Code Ann. § 8-20-102, and the conduct of the petition hearing is governed by Tenn. Code Ann. § 8-20-103(a). Tenn. Code Ann. § 8-20-101(c) permits the Sheriff to file in court an agreement with the county executive if the Sheriff agrees "with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body . . ."

But the extent to which this statutory scheme is applicable to the Shelby County Sheriff's Office is not clear. Tenn. Code Ann. § 8-20-112 provides:

In any county having a civil service system for the sheriff's department pursuant to chapter 8, part 4 of this title or other provision of general law or the provisions of a private act, or a civil service system for all county employees pursuant to the provisions of a private act, *the employment or termination of employment of any deputy or assistant in any offices covered by this chapter shall be pursuant to the provisions of such civil service system*, and the provisions of § 8-20-109 shall not apply to such county.

(Emphasis added). Shelby County has operated a civil service system under 1971 Tenn. Priv. Acts Ch. 110, as amended, the Shelby County Salary Policy and Civil Service Merit Act. Since September 1, 1986, Shelby County has operated as a charter county under Tenn. Code Ann. §§ 5-1-201, *et seq.* Under Tenn. Code Ann. § 5-1-210(8), the charter adopted under this statute may provide for the maintenance and administration of a civil service system. The Shelby County Charter provides that the 1971 private act, among others, is applicable to the county as an ordinance, and may be amended by ordinance. Shelby County Charter, §§ 7.14 & 6.09. The Court of Appeals for the Western Section has concluded that, under Tenn. Code Ann. § 8-20-112, Tenn. Code Ann. §§ 8-20-101, *et seq.*, cannot be used to raise the salaries of employees holding classified positions under Shelby County's civil service system. *Patterson v. Rout*, slip op., No. W2001-01769-COA-R3-CV, 2002 WL 1592674 (Tenn. Ct. App. W.S. July 10, 2002). The Court found that salaries for those positions are governed by the county's civil service system. The Court expressly refused to rely on its holding to the contrary in *Key v. Bolton*, No. 02A01-9703-CR-00072, 1997 Lexis 556 (Tenn. Ct. App. August 13, 1997), *p.t.a. denied* (1997). The Court pointed out that the opinion was filed as a "Memorandum Opinion," and, under the Court's rules, could not be relied on for any reason in a

subsequent unrelated case. The Court remanded the case to the Trial Court to determine whether three of the positions for which an increase was sought were classified positions.

This Office has not reviewed the current ordinance regarding the Shelby County Civil Service. If the Sheriff's employees are included in this system, then, under *Patterson*, a court is likely to hold that terms of employment and salary levels are governed by that system and cannot be changed by petitioning under Tenn. Code Ann. §§ 8-20-101, *et seq.* But it is not clear that the Shelby County Sheriff would be precluded from enforcing the requirement that the county fund salary expenditures necessary for the discharge of the Sheriff's statutorily mandated duties as set forth in Tenn. Code Ann. § 8-20-120 and Tenn. Code Ann. § 8-20-101. In *Patterson*, the Court of Appeals found that the primary purposes of a civil service employment system — protecting employees from arbitrary removal and establishing consistent terms of employment — would be undermined if salaries could be raised by a process that circumvented the civil service system. But that case involved only the salaries of particular positions, not whether the positions themselves were necessary for the official to carry out his statutorily mandated duties. We think a court would probably conclude that requiring the county commission to fund the offices listed in Tenn. Code Ann. §§ 8-20-101, *et seq.*, at a level that will enable the official to carry out his or her statutorily mandated duties would not undermine the county's civil service system and is necessary to protect the public. For this reason, we think a court would conclude that, under Tenn. Code Ann. § 8-20-101, once the Shelby County Commission passes a budget, the Shelby County Sheriff may petition the court for additional positions necessary to enable him to carry out his statutorily mandated duties and may seek a writ of mandamus to enforce the court's order.

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